SUPREME COURT, U. S.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1968

No. 1358

PACIFIC OIL COMPANY,

Petitioner,

vs.

WALTER J. HICKEL, Secretary of the Interior of the United States,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF FOR PETITIONER

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Respondent's principal argument against granting the petition here is that petitioner's predecessors in interest acquiesced in the Commissioner's default decision for too long a time. The fact that petitioner's predecessors were financially unable to pursue the contest further is not disputed by respondent and has never been questioned in the proceedings below (Apps. C and D to Pet., pp. 40, 52). Therefore, it is somewhat ironic to argue now that those

claimants should have appealed from the default decision in 1933. If they could have done so, it would have belied the very fact upon which they based their request for a determination of the contest on the record. This clearly distinguishes *Gabbs Exploration Company v. Udall* (D.C. Cir. 1963) 315 F.2d 37, certiorari denied (1963) 375 U.S. 822, upon which respondent relies, where no such request was made.

Contrary to respondent's assertion (Br. in Opposition, p. 4), this case does, we submit, raise a substantial legal question of general applicability. The court of appeals held that respondent's inconsistent actions and "somewhat bewildering" changes of policy were not a matter for judicial remedy (App. D to Pet., p. 54). Respondent does not deny those actions and policy changes, or that they were arbitrary. A court is the proper forum to grant relief from arbitrary executive action (5 U.S.C. § 706, App. A to Pet., p. 2). The court of appeals denied this, and it is of great importance to the administration of justice to have this decision corrected.

For the foregoing reasons and those set forth in our petition, the petition for certiorari should be granted.

Respectfully submitted

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